IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1957

No. ~~.....~~ 49

LOCAL 24 of the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, and KENNETH BURKE, President and Business Agent of Local 24,
Petitioners,

vs.

REVEL OLIVER and A. C. E. TRANSPORTATION COMPANY, INC., and INTERSTATE TRUCK SERVICE, INC.,
Respondents.

PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of Ohio and the Court of Appeals of Summit County, Ohio.

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PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of Ohio and the Court of Appeals of Summit County, Ohio.

Petitioners pray that a Writ of Certiorari issue to review the final judgment of the Ohio Supreme Court entered in the above entitled case on January 29, 1958. Since portions of the record were never forwarded to the Ohio Supreme Court, this petition is directed to both the Supreme Court of Ohio and to the Court of Appeals.

CITATIONS TO OPINIONS BELOW.

There is no written opinion by the Ohio Supreme Court in this case. Its judgment, not yet officially reported, is printed in Appendix A, *infra*, pp. 15-16. The Court of Appeals for Summit County issued a written opinion which is not yet officially reported and is printed in Appendix B, *infra*, pp. 17-30. The Court of Common Pleas of Summit County also issued a written opinion which was incorpo-

rated by reference in the opinion of the Court of Appeals. The opinion of the Court of Common Pleas is unreported and printed in Appendix C, *infra*, pp. 31-55. The journal entry and permanent injunction entered by the Court of Appeals is printed in Appendix D, *infra*, pp. 56-65.

JURISDICTION.

The Ohio Supreme Court on January 29, 1958, issued a final judgment dismissing the Petitioners' appeal from a permanent injunction entered by the Court of Appeals. The dismissal was predicated upon the ground that the constitutional questions raised by the Petitioners were not "debatable."[1] The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257 (3).

QUESTIONS PRESENTED.

Does a state court have jurisdiction to enjoin the operation of, or to declare illegal under state law, an agreement between common carriers and a union representing their employees, under which agreement a certain group of drivers, who bring their own equipment to the service of the carrier and drive such equipment in such service, are expressly made employees and are protected in their enjoyment of pensions, group insurance, paid holidays and vacations, seniority rights and of union wages by the establishment of a minimum lease rate for the use of their equipment:

(a) In view of the fact that the relationship between the parties and the subject matter over which they are required to bargain must be determined by an application of the Labor Management Relations Act of 1947, or

(b) In view of the exclusive jurisdiction of the Interstate Commerce Commission over motor carriers engaged

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[1] The Ohio Supreme Court thereby rejected on the merits Petitioners' contentions based upon the Constitution and laws of the United States. *Tumey v. Ohio*, 273 U. S. 510, 515. *See also: Amalgamated Meat Cutters v. Fairlawn Meats*, 353 U. S. 20, 22.

in interstate commerce conferred by the Interstate Commerce Act.

CONSTITUTIONAL PROVISIONS INVOLVED.

The constitutional provisions involved are Article VI, Section 2, and Article I, Section 8 of the United States Constitution. They are printed in Appendix E, *infra*, pp. 66-68.

STATEMENT.

(The Transcript of Testimony was not printed for use in the Ohio Supreme Court because that court dismissed the Petitioners' appeal. Record references "R" refer to testimony taken before the Court of Common Pleas, and "A. R." to testimony taken before the Court of Appeals.)

Petitioner Local 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization having offices in Akron, Ohio. Petitioner Kenneth Burke is the President and Business Agent of Local 24.

The Respondent, Revel Oliver (referred to as Respondent Oliver) is a resident of Ohio and a member of the Petitioner Union. The two common carriers involved, A. C. E. Transportation Company, Inc., and Interstate Truck Service, Inc., are common carriers certificated by the Interstate Commerce Commission and the Ohio Public Service Commission and are engaged in interstate commerce (A. R. 53).[2] The Respondent Carriers have their principal offices in Ohio and are parties to a collective bargaining agreement known as the Central States Over-the-Road Motor Freight Agreement (Ex. No. 1, R. 39).

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[2] Although these two common carriers were joined with the Petitioners as defendants in the state courts, they have, in the course of this litigation, taken a position adverse to that of the Petitioners. For this reason they are joined herein as Respondents and are referred to as "Respondent Carriers."

The vast majority of the trucking companies in twelve Midwestern states[3] are parties to the Central States Agreement which covers between 3,000 and 3,500 employers and 45,000 to 50,000 truck drivers, all engaged in what is known as over-the-road or intercity trucking (R. 96-97). This area-wide agreement is in effect with approximately 500 motor freight carriers and covers 6,000 truck drivers working in the service of these carriers in the State of Ohio alone. Of the 6,000 Ohio truck drivers, 90 to 95% drive equipment owned by the carrier (R. 96). The balance of 5 to 10% drive equipment which they own and lease to the certificated carrier.

The provisions of the collective bargaining agreement involved in this proceeding are also currently in effect with the majority of motor freight carriers located in ten southern states (A. R. 43).[4]

Article XXXII of the agreement, the enforcement of which was enjoined by the courts below, applies to owners of equipment who lease such equipment to a certificated carrier only if the owner "is also employed as a driver" (Ex. No. 1, p. 38n, R. 39). Article XXXII, although modified from time to time, has been included in collective bargaining agreements covering Midwestern trucking companies since 1938 (R. 113-114).[5] An owner-driver is a truck driver who owns his own truck but leases that truck to a certificated carrier and is hired by the carrier to operate the truck. An owner-driver has no license or certificate which would permit him to engage in the transportation business (R. 63).

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[3] Michigan, Ohio, Indiana, Illinois, Wisconsin, Minnesota, Iowa, Missouri, South Dakota, North Dakota, Nebraska, Kansas and Louisville, Kentucky.

[4] Arkansas, Louisiana, Oklahoma, Texas, Alabama, Georgia, Florida, Kentucky, Mississippi and Tennessee.

[5] The validity of Article XXXII, under the federal anti-trust laws, was sustained in 1941 in an opinion by the United States Attorney General during the course of War Labor Board proceedings (R. 117).

Article XXXII requires certificated carriers to exercise exclusive control over drivers who operate their own equipment as drivers in the service of the carriers (Ex. No. 1, p. 39, R. 39). The purpose of this requirement is to insure the "employee" status of truck-owners who drive their own equipment in the service of the carrier, thus preventing the certificated carrier from depriving the owner-driver of such benefits, as Social Security, Workmen's Compensation and Unemployment Compensation (A. R. 45-46).

In addition to insuring the employees status of owner-drivers, Article XXXII provides for seniority (Sec. 2), vacation and holiday pay (Sec. 2 and Art. XXXIII, Art. XXXIV), health and welfare coverage (Sec. 2 and Art. XXXV), pensions (Sec. 2 and Art. XXXVI), separate checks for driver's wages and equipment rental (Sec. 6), payment of taxes, tolls, license fees, social security, and workmen's compensation by the carrier (Sec. 10), and prohibition of schemes designed to circumvent the payment of wage scales provided in the agreement (Secs. 16 and 18).[6]

Article XXXII also provides minimum rates "for leased equipment owned and driven by the owner-driver" (Ex. No. 1, p. 41, R. 39; R. 127). As the Article makes clear, it is applicable only to the rates for equipment which is actually driven by its owner. The purpose of this requirement is to protect the owner-driver's negotiated wage by preventing the certificated carrier from requiring the owner-driver to operate his equipment at less than actual cost, thus reducing his real wages as a driver under the union contract (R. 115-116, 147-148; A. R. 39, 45-46).

For example, under Article XXV of the Agreement, all drivers operating tandem axle units receive, as wages, 8.32 cents per mile on all runs. Article XXXII guarantees to an owner-driver an additional, minimum lease rate of 10¢

[6] Since Article XXXII is reprinted in the opinion of the Court of Appeals, Appendix B, *infra*, pp. 19-25, and in the journal entry of that court, Appendix D, *infra*, pp. 57-63, it is not reprinted in the Statement of the case.

per mile for a tandem axle tractor. Since the minimum lease rate of 10¢ per mile represents the actual cost of operating such equipment (R. 115; A. R. 42), a lease rate of 8¢ per mile would cause an operating loss of 2¢ per mile and accordingly would reduce the owner-driver's wage as an employee by 2¢ per mile. Thus, in the example just given, the owner-driver's *real* driving wage would be 6.32¢ per mile rather than the established wage rate of 8.32¢ per mile. *To prevent the use of such schemes which necessarily result in a reduction of wages, Article XXXII was included in the contract* (R. 115-116, 147-148; A. R. 39, 45-46).

Extensive cost studies by the union and carriers preceded the establishment of the minimum rates set forth in Article XXXII (A. R. 41-42). As indicated above, these minimum rates represent the actual cost of operating the equipment (R. 115; A. R. 42). No attempt was made to negotiate an equipment-operating profit for the owner-drivers (Ex. No. 1, p. 42, R. 39; A. R. 40, 46).

Respondent Oliver, an occasional driver of motor freight equipment leased to the Respondent Carriers, brought this suit to restrain the enforcement of Article XXXII of the collective bargaining agreement. It was alleged that Article XXXII of the agreement violates the Ohio Anti-Trust Act. Ohio Revised Code, Section 1331.01. An *ex parte* restraining order was issued contemporaneously with the filing of the action.

The Petitioners' answer denied any violation of state law, and, in addition to this denial, raised several constitutional defenses going to the jurisdiction of the state courts. The Petitioners alleged that the execution of the collective bargaining agreement for and on behalf of its membership, including the Respondent Oliver, was conduct protected by the National Labor Relations Act and, therefore, free from interference by any state statute or policy.

During the trial and argument of the issues, the Respondents asserted that Respondent Oliver is an "independent contractor" and not an "employee" as those terms are defined in Section 2 (3) of the National Labor Relations Act. The Respondents also argued that Article XXXII does not constitute an appropriate subject for bargaining under the federal law. The Petitioners asserted that such questions cannot be decided by the state courts, since they involve an exclusive function of the National Labor Relations Board (referred to as the "Board"); namely, the interpretation and application of the National Labor Relations Act. The Petitioners also urged the pre-emptive character of the Interstate Commerce Act as a constitutional objection to the exercise of state jurisdiction.

Nevertheless, both the Court of Common Pleas and the Court of Appeals asserted jurisdiction to construe the National Labor Relations Act, and held the Respondent to be an "independent contractor" on whose behalf the Union could not bargain collectively under the federal law. Both courts held that Article XXXII was not bargainable under the National Labor Relations Act. The state courts also rejected the jurisdictional defense predicated upon the Interstate Commerce Act. A permanent injunction restraining the enforcement of Article XXXII of the collective bargaining agreement was entered on September 30, 1957, by the Court of Appeals and on January 29, 1958, the Ohio Supreme Court entered final judgment dismissing Petitioners' appeal. It is to review this final judgment that this Petition is submitted.

HOW FEDERAL QUESTIONS ARE PRESENTED.

Petitioners' answer in the Court of Common Pleas affirmatively alleged the constitutional objections to an assertion of state jurisdiction relied upon in this Petition (Ans., Pars. 14 and 15). The pre-emptive character of the National Labor Relations Act and Interstate Commerce Act was briefed and argued in the Court of Appeals which

heard the case *de novo* (App. Br., pp. 4-36, 65-68). These constitutional questions were presented to the Ohio Supreme Court in Petitioners' "Assignment of Errors" (App. Br., pp. 2-3). On January 29, 1958, the appeal was dismissed on the ground that "no debatable constitutional question is involved in said cause."

REASONS FOR GRANTING THE WRIT.

1. Contrary to the decisions of this Court in *Amalgamated Meat Cutters v. Fairlawn Meats, Inc.*, 353 U. S. 20, and *District Lodge 34 v. Cavett Co.*, 2 L. Ed. 2d 72, the Ohio courts asserted jurisdiction over matters which had been confided by Congress to the Board. The National Labor Relations Act specifically defines the term "employee" and also specifically excludes "independent contractors" from such definition. 29 U. S. C., Sec. 152 (3). The application of these definitions to a particular individual, such as the Respondent Oliver, is necessarily the exclusive task of the Board. Were it otherwise, over two hundred federal courts and literally thousands of state courts and tribunals would be interpreting the terms of the Act. Congress did not intend that the federal labor Act should be "enforced by any tribunal competent to apply law generally to the parties. * * * A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law." *Garner v. Teamsters*, 346 U. S. 485, 490-491.

If, as the Ohio courts held, the states are free to determine whether an individual is an "employee" under the National Labor Relations Act, an individual such as the Respondent Oliver, who operates his truck in the service of common carriers across the borders of numerous states (R. 61-62), would have his status under the federal law vary from one state to another. This very situation was anticipated in *N. L. R. B. v. Hearst Publications*, 322 U. S. 111, 123, where this Court projected the possibility that

under such a rule "persons who might be 'employees' in one state would be 'independent contractors' in another." A uniform interpretation and application of the federal labor law is an impossibility if a multiplicity of state tribunals are permitted to assert a concurrent jurisdiction. *Cf. Motor Cargo, Inc.*, 108 N. L. R. B. 716, discussed at p. 13, *infra*.[7]

The necessity for a single uniform interpretation is underscored by the opinions of the courts below which evidenced a preoccupation with the Respondent Oliver's ownership of motor vehicle equipment as establishing his status under the National Labor Relations Act. An examination of both early and recent Board decisions reveals no such emphasis on ownership but rather on control. *National Van Lines*, 117 N. L. R. B. 1213, 1219-1220; *New Orleans Mfg. Co.*, 115 N. L. R. B. 1494, 1497; *Hughes Transportation Co.*, 109 N. L. R. B. 458, 462; *Hoster Supply Co.*, 109 N. L. R. B. 466, 469; *Nu Car Carriers, Inc.*, 88 N. L. R. B. 75, *enf'd* 189 F. 2d 756, 758-759 (C. A. 3), *cert. denied*, 342 U. S. 919; *Field Packing Co.*, 48 N. L. R. B. 850, 852, *enf'd*, 8 C. C. H. Labor Cases, par. 62,036 (C. A. 6).

This Court, which has jurisdiction to review orders of the Board, has itself refrained from construing the National Labor Relations Act prior to an original construction by the Board. *N. L. R. B. v. Hearst Publications*, 322 U. S. 111, 130 [employee status]; *Weber v. Anheuser-Busch*, 348 U. S. 468, 478-479 [scope of bargaining]. *See also: Local Union No. 25 v. New York-New Haven Railroad*, 350 U. S. 155, 161; *Garner v. Teamsters*, 346 U. S. 485, 489.

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[7] Recommending dismissal of unfair labor practice charges in a currently pending Board proceeding (Case No. 8-CC-51) to which Petitioners and Respondent A. C. E. Transportation Co., Inc., are parties, the trial examiner, referring to the decisions of the Ohio courts in the instant case, pointed out that *"the labor dispute in this case is the product of a state court decree which disrupted that bargaining relationship* [between Petitioners and Respondent A. C. E. Transportation Co., Inc.]" I. R. 151, p. 20.

It is clear that Ohio's attempt to apply state anti-trust concepts to questions of "employee" status in situations involving a collective bargaining relationship between a union and interstate trucking companies covered by the National Labor Relations Act violates the Supremacy Clause of the Constitution and is in direct conflict with the decisions of this Court.

2. Contrary to the decisions of this Court in *Amalgamated Association v. Wisconsin Board,* 340 U. S. 383, and *Weber v. Anheuser-Busch,* 348 U. S. 468, the Ohio courts asserted original jurisdiction to determine whether the subjects covered by Article XXXII constitute appropriate matters for bargaining under Sections 8 (d) and 9 (a) of the National Labor Relations Act. In the *Amalgamated Case,* this Court observed that union demands concerning shift assignments had been held to be non-arbitrable under the Wisconsin Statute while "similar problems . . . have been held to be appropriate subjects for collective bargaining under the federal Act. . . ." 340 U. S. at 399. An identical conflict exists in the case at bar. The Board has held that an employer is under an affirmative duty to bargain concerning the initiation of an independent contractor leasing, vis-a-vis employee, mode of operation. *Shamrock Dairy, Inc.,* 119 N. L. R. B. No. 134. Thus, the *Shamrock Dairy Case* demonstrates that Article XXXII, Section 4, which requires the operation of leased equipment by employees of the carrier constitutes an appropriate subject for bargaining under the National Labor Relations Act.[8] Manifestly, items such as seniority, vacation and holiday pay, group insurance and pensions (Sec. 2; Art. XXXIII-XXXVI), payment of toll charges by the

[8] Article XXXII, Sec. 4, which requires the operation of leased equipment by employees of the carrier is analogous to subcontracting clauses which require the employer to assign work normally performed in the bargaining unit to employees in the unit. Such subcontracting clauses are appropriate subjects for bargaining. *Polar Water Company,* 120 N. L. R. B. No. 25; *Timken Roller Bearing Co.,* 70 N. L. R. B. 500, 518, enforcement denied on other grounds, 161 F. 2d 949 (C. A. 6).

carrier (Sec. 10), and the prohibition of schemes designed to evade the wage scale (Secs. 16 and 18) constitute appropriate subjects for bargaining.[9] The Board has also held, with Court approval, that efforts of owner-drivers to bring about a termination of a leasing system constitutes activity protected under Section 7 of the Act. *Nu-Car Carriers, Inc.*, 88 N. L. R. B. 75, *enf'd* 189 F. 2d 756 (C. A. 3), *cert. denied*, 342 U. S. 919. Notwithstanding the foregoing, the Courts below enjoined the enforcement of Article XXXII reasoning that no "right to collective bargaining or any other right arising under the labor laws of the federal government" was presented (App. B, *infra*, p. 27).

The Ohio courts, like the Missouri court in *Weber v. Anheuser-Busch*, 348 U. S. 468, would subject the collective bargaining process to the requirements of a state anti-trust statute. Here, as in *Weber*, "if the conduct is eventually found by the National Labor Relations Board to be *protected* by the Taft-Hartley Act, the state cannot be heard to say that it is enjoining that conduct for reasons other than those having to do with labor relations." 348 U. S. at 480.[10]

Every state court judgment invalidating provisions in collective bargaining agreements with interstate employers reaching this Court has been reversed. *Local Union No. 89 v. American Tobacco Co.*, 348 U. S. 978; *Teamsters v. Kerrigan Iron Works*, 353 U. S. 968; *McCrary v. Aladdin*

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[9] *See, e. g.: Inland Steel v. N. L. R. B.*, 170 F. 2d 247 (C. A. 7), *cert. denied* 336 U. S. 960 [Pensions and seniority]; *W. W. Cross & Co. v. N. L. R. B.*, 174 F. 2d 875 (C. A. 1) [Group insurance]; *Singer Mfg. Co.*, 24 N. L. R. B. 444 [Vacation and holiday pay].

[10] Since the injunction issued by the Court of Appeals "perpetually" enjoins Petitioners "from giving force and effect to Section 32 of the Contract" (App. D, *infra*, p. 65), it must be assumed that a strike to compel the carriers to comply with Article XXXII would fall within the prohibitions of the injunction. Yet, this Court has held repeatedly that such strikes are immune from state restraint. *See e. g.: United Mine Workers v. Arkansas Oak Flooring Co.*, 351 U. S. 52; *United Auto Workers v. O'Brien*, 339 U. S. 454.

Radio Industries, 2 L. Ed. 2d 22. The Ohio courts by asserting jurisdiction to determine what constitutes an appropriate subject for collective bargaining have, in direct conflict with the previous decisions of this Court, invaded an area reserved by Congress to the Board.

3. The Ohio courts asserted jurisdiction to regulate an alleged restraint of trade in the motor transportation industry. The Interstate Commerce Act represents the first administrative regulatory program of a comprehensive nature enacted by Congress. In enacting the Interstate Commerce Act, Congress anticipated the possible impact of anti-trust legislation upon the administrative powers of the Interstate Commerce Commission. Recognizing this interplay, Congress specifically empowered the Commission to permit common carriers to engage in practices which would, in the absence of such an express statutory exemption, violate the Sherman Anti-Trust Act. 49 U. S. C. Section 5 (b) (9). This Court has considered and sustained the validity of such exemption. *McLean Trucking Co. v. United States*, 321 U. S. 67.

Furthermore, the Interstate Commerce Commission has promulgated a detailed and comprehensive administrative regulation setting forth the minimum requirements of the relationship between certificated common carriers and owner-operators such as the Respondent Oliver. *Ex parte* No. MC-43, 22 F. R. 760. Among the provisions found in MC-43 is the duty of common carriers to exercise control over leased equipment. The detailed provisions of MC-43 evidence a recognition on the part of the Commission of the evils inherent in the so-called owner-operator system of truck leasing. In its opinion sustaining the validity of MC-43, this Court affirmed the Commission's authority to remedy such evils. *American Trucking Association v. United States*, 344 U. S. 298, 303-306.

As this Court has frequently held, a comprehensive, detailed administrative regulatory program such as that es-

tablished by the Interstate Commerce Act and MC-43, presents the strongest possible evidence of a Congressional intention to exclude supplementary or contradictory state regulation. *Napier v. Atlantic Coast Line R. Co.*, 272 U. S. 605, 612-613. *See also: Pennsylvania v. Nelson*, 350 U. S. 495, 504, 509.

Thus, independently of the fact that the judgment of the Court below has denied rights protected under the National Labor Relations Act, a separate and additional reason for granting this Petition exists. By regulating an alleged restraint of trade in the motor transportation industry, the judgment below invades an area reserved by Congress to the Interstate Commerce Commission.

4. This case involves important questions affecting the application of the National Labor Relations Act to a collective bargaining agreement covering thousands of employers and employees in the motor transportation industry. Article XXXII is an integral part of the uniform, area-wide agreement in effect with motor freight carriers in Ohio and eleven other Midwestern States. As pointed out in the Statement of the Case, the agreement covers between 3,000 and 3,500 employers and from 45,000 to 50,000 truck drivers.

In *Motor Cargo, Inc.*, 108 N. L. R. B. 716, the Board held that this very agreement effectively establishes a multi-employer, multi-state collective bargaining unit. The Board therefore held that a "single-employer unit . . . is not appropriate for purposes of collective bargaining" and dismissed a representation petition filed by certain owner-drivers employed by an Ohio carrier. 108 N. L. R. B. at 717. Notwithstanding the Board's refusal in *Motor Cargo, Inc.*, to determine, on a piecemeal basis, the "employee" status of owner-drivers covered by the agreement, the Ohio courts asserted jurisdiction to do so. A consistent interpretation and application of the National Labor Relations Act to a collective bargaining agreement

establishing a multi-state, multi-employer unit is impossible if state courts are permitted to enjoin such agreements pursuant to an application of state law.

The practical effect of the decision below, as interpreted by employers who are parties to the agreement, is to permit Ohio carriers to avoid the payment of collectively bargained drivers' wages and allowances to those truck drivers who drive their own equipment in the service of a carrier. Furthermore, the Ohio decision has relieved Ohio carriers of the obligation, imposed under Article XXXII, to pay workmen's and unemployment compensation, toll charges and license fees, etc., on behalf of such drivers. Employees of carriers located in the other eleven midwestern states covered by the agreement are thereby subjected to the real danger that their wages and conditions of employment cannot long endure at present levels if there are available truck drivers receiving substandard wages and benefits. *Thornhill v. Alabama*, 310 U. S. 88, 103. The very conditions which MC-43 and Article XXXII are designed to prevent will become rampant if the decision below is permitted to stand.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that the petition for certiorari should be granted.

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APPENDIX "A."

Judgment of Supreme Court of Ohio, Dismissing Appeal.

The Supreme Court of the State of Ohio.

January Term, A. D. 1958.

To wit: Wednesday, January 29, 1958.

The State of Ohio
City of Columbus }

Revel Oliver,
Plaintiff-Appellee,
No. 35454 vs.

A. C. E. Transportation Co., Inc., et al., Local 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America et al.,
Defendants-Appellants.

Appeal from the Court of Appeals of Summit County.

This cause came on to be heard upon the transcript of the Record of the Court of Appeals of Summit County, upon the motion of the appellee to dismiss the appeal, filed as of right herein, and was argued by counsel.

On consideration whereof, it is ordered and adjudged that said appeal be, and the same hereby is, dismissed for the reason no debatable constitutional question is involved in said cause.

It is further ordered and adjudged that the appellee recover from the appellants his costs herein expended, taxed at $.....

Ordered, That a special mandate be sent the Court of Common Pleas of Summit County, to carry this judgment into Execution.

Ordered, That a copy of this entry be certified to the Clerk of the Court of Appeals of Summit County, "for entry."

I, Elliot E. Welch, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing entry is truly taken and correctly copied from the Journal of said Court.

Witness my hand and the Seal of said Court, this 5th day of February, 1958.

Elliot E. Welch,
Clerk of the Supreme Court of Ohio.

By .....
Deputy.

APPENDIX "B."

Opinion of Ohio Court of Appeals.

State of Ohio, Summit County. } ss.

In the Court of Appeals,
Ninth Judicial District.

Revel Oliver, etc.,
Appellee,
v.
All-States Freight, Inc., et al.,
A. C. E. Transportation Co., Inc., et al.,
Appellees,
Local 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, etc., et al.,
Appellants.

No. 4679.
Opinion.
Argued May 16, 1957.
Decided Aug. 7, 1957.

Appeal on Questions of Law and Fact.

Stanley Denlinger,
For Appellee Revel Oliver, etc.

Brouse, McDowell, May, Bierce & Wortman,
For Appellees A. C. E. Transportation Co., Inc., and Interstate Truck Service, Inc.

David Previant, Robert C. Knee, and Bruce Laybourne,
For Appellants.

Doyle, J.

This is an action brought by Revel Oliver, the owner of tractors and trailers, each of which is under a lease agreement with one or the other of the two appellee companies —A. C. E. Transportation Co., Inc., and Interstate Truck

Service, Inc.—which are common carriers engaged in transporting freight for hire by motor equipment on the highways of this and other states under certificates of convenience and necessity issued by the Interstate Commerce Commission and the Public Utilities Commission of Ohio; the other original defendants, with the exception of the appellants in this court, having been dismissed by plaintiff in the trial court.

The purpose of the action is to restrain the appellee carriers, the appellant Union (Local 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America), and the appellant Kenneth Burke, as president and business agent of said Local 24, from enforcement of a contract entered into by them, which it is claimed would supersede the owner-operator and carriers' existing lease agreement, and would restrict trade and create a monopoly in the business of leasing equipment, in violation of Sec. 1331.01, R. C., et seq. (Valentine Act.)

The defendant Union asserts that the sole jurisdiction is in the National Labor Relations Board; that if any violation of law exists, it is a violation of the Federal Antitrust Laws, rather than the state laws; and that the matter is one falling within the field of collective bargaining and other legitimate fields of agreement between employer and employee.

The plaintiff states that:

"• • • we are not here concerned with a labor dispute. Nor do we seek an interpretation of, nor attempt an assault upon, the agreement as it deals with the wages and conditions of employees of the carriers, nor the right of the union and carriers to negotiate and execute a collective bargaining contract covering the subject matter which is within their field to negotiate.

"Our problem here is, May the carriers and Union fix by agreement the price to be charged for the use

of and the supervision of the trucks and trailers used in the trucking business, owned by individuals who lease the equipment to the carriers. This and nothing else is here involved."

The subject of the controversy is Article 32 of the contract between the Union and the carriers, which became effective during the life of leases between the owner-operator and the carriers. The provisions are:

"Owner-Operators

"Section 1. Owner-operators (See Note), other than certificated or permitted carriers, shall not be covered by this Agreement, unless affiliated by lease with a certificated or permitted carrier which is required to operate in full compliance with all the provisions of this Agreement and holding proper I. C. C. and state certificates and permits. Such owner-operators shall operate exclusively in such service and for no other interests.

"(Note: Whenever 'owner-operator' is used in this article, it means 'owner-driver' only, and nothing in this article shall apply to any equipment leased except where owner is also employed as a driver.)

"Section 2. This type of operator's compensation for wages and working conditions shall be in full accordance with all the provisions of this Agreement. The owner-operator shall have seniority as a driver only.

"Section 3. Certificate and title to the equipment must be in the name of the actual owner.

"Section 4. In all cases, hired or leased equipment shall be operated by an employee of the certificated or permitted carrier. The employer expressly reserves the right to control the manner, means and details of, and by which, the owner-operator performs his services, as well as the ends to be accomplished.

"Section 5. Certificated or permitted carriers shall use their own available equipment, together with all leased equipment under minimum thirty-day bona fide lease arrangements, on a rotating board, before hiring any extra equipment.

"Section 6. Separate checks shall be issued by the certificated or permitted carriers for driver's wages and equipment rental. At no time shall the equipment check be for less than actual miles operated. Separate checks for drivers shall not be deducted from the minimum truck rental revenue. The driver shall turn in time direct to the certificated or permitted carrier. All monies due the owner-operator may be held no longer than two weeks, except where the lease of equipment agreement is terminated and in such cases all monies due the operator may be held no longer than thirty (30) days from the date of the termination of the operation of the equipment.

"Section 7. Payment for equipment service shall be handled by the issuance of a check for the full mileage operated, tonnage or percentage, less any agreed advances. A statement of any charges by the certificated or permitted carrier shall be issued at the same time, but shall not be deducted in advance.

"Section 8. The owner-operator shall have complete freedom to purchase gasoline, oil, grease, tires, tubes, etc., including repair work, at any place where efficient service and satisfactory products can be obtained at the most favorable prices.

"Section 9. There shall be no deduction pertaining to equipment operation for any reason whatsoever.

"Section 10. The Employer or certificated or permitted carrier hereby agrees to pay road or mile tax, social security tax, compensation insurance, public liability and property damage insurance, bridge tolls,

fees for certificates, permits and travel orders, fines and penalties for inadequate certificates, license fees, weight tax and wheel tax, and for loss of driving time due to waiting at state lines, and also cargo insurance. It is expressly understood that the owner-driver shall pay the license fees in the state in which title is registered.

"All tolls, no matter how computed, must be paid by the Employer regardless of any agreement to the contrary.

"All taxes or additional charges imposed by law relating to actual truck operation and use of highways, no matter how computed or named, shall be paid by the Carrier, excepting only vehicle licensing as such, in the state where title is registered.

"Section 11. There shall be no interest, or handling charge on earned money advanced prior to the regular pay day.

"Section 12. (a) All certificated or permitted carriers hiring or leasing equipment owned and driven by the owner-driver shall file a true copy of the lease agreement covering the owner-driven equipment with the Joint State Committees. The terms of the lease shall cover only the equipment owned and driven by the owner-driver and shall be in complete accord with the minimum rates and conditions provided herein, plus the full wage rate and supplementary allowances for drivers as embodied elsewhere in this Agreement.

"(b) The minimum rate for leased equipment owned and driven by the owner-driver shall be:

	Per mile
Single axle, tractor only	9½¢
Tandem axle, tractor only	10¢
Single axle, trailer only	3¢
Tandem axle, trailer only	4¢

75% of the above rates to apply for deadheading, if and when ordered, provided, however, that the 75% rate will apply only on first empty dispatch away from the home terminal; thereafter the full equipment rental rate to apply until driver is redispatched from home terminal; the above rates to be based on 23,000-pound load limit. On load limits over 23,000 pounds, there shall be one-half (½) cent additional per mile for each 1,000 pounds or fraction thereof in excess of 23,000 pounds. There shall be a minimum guarantee of 24,000 pounds for leased equipment owned and driven by the owner-driver. Nothing herein shall apply to leased equipment not owned by a driver.

"The minimum rates set forth above result from the joint determination of the parties that such rates represent only the actual cost of operating such equipment. The parties have not attempted to negotiate a profit for the owner-driver.

"Section 13. Driver-owner mileage scale does not include use of equipment for pickup or delivery at point of origin terminal or at point of destination terminal, but shall be subject to negotiations between the Local Union and Company. Failure to agree shall be submitted to the grievance procedure.

"Section 14. There shall be no reductions where the present basis of payment is higher than the minimum established herein for this type of operation. Where owner-operator is paid on a percentage or tonnage basis and the operating company reduces its tariff, the percentage or tonnage basis of payment shall be automatically adjusted so that the owner-operator suffers no reduction in equipment rental or wages, or both.

"Section 15. It is further understood and agreed that any arrangements which have heretofore been entered into between members of this Union, either

among themselves or with the employer or with the aid of the Employer, applicable to owner-driver equipment contrary to the terms hereof, shall be dissolved or modified within thirty (30) days after the signing of this Agreement so that such arrangements shall apply only to equipment of the owner-driver while being driven by such owner-driver. In the event that the parties cannot agree on a method of dissolution or modification of such arrangement to make the same conform to this Agreement, the question of dissolution or modification shall be submitted to arbitration, each party to select one member of the arbitration board, and the two so selected to choose a third member of said board. If the two cannot agree upon the third within five (5) days, he shall be appointed by the Joint State Committee. The decision of said board to be final and binding.

"Section 16. It is further agreed that the intent of this clause and this entire Agreement is to assure the payment of the Union scale of wages as provided in this Agreement and to prohibit the making and carrying out of any plan, scheme or device to circumvent or defeat the payment of wage scales provided in this Agreement. This clause is intended to prevent the continuation of or formation of combinations or corporations or so-called lease of fleet arrangements whereby the driver is required to and does periodically pay losses sustained by the corporation or fleet arrangement, or is required to accept less than the actual cost of the running of his equipment, thus, in fact, reducing his scale of pay.

"Section 17. It is further agreed that if the Employer or certificated or permitted carrier requires that the 'driver-owner-operator' sell his equipment to the Employer or certificated or permitted carrier, directly or indirectly, the 'driver-owner-operator' shall be paid

the fair true value of such equipment. Copies of the instruments of sale shall be filed with the Union and unless objected to within ten (10) days shall be deemed satisfactory. If any question is raised by the Union as to such value, the same shall be submitted to arbitration, as above set forth, for determination. The decision of the arbitration board shall be final and binding.

"Section 18. It is further agreed that the Employer or certificated or permitted carrier will not devise or put into operation any scheme, whether herein enumerated or not, to defeat the terms of this Agreement, wherein the provisions as to compensation for services on and for use of equipment owned by owner-driver shall be lessened, nor shall any owner-driver lease be cancelled for the purpose of depriving Union employees of employment, and any such complaint that should arise pertaining to such cancellation of lease or violation under this section shall be subject to Article X.

"Section 19. (a) The use of individual owner-operators shall be permitted by all certificated or permitted carriers who will agree to submit all grievances pertaining to owner-operators to joint Employer-Union grievance committees in each respective state. It is understood and agreed that all such grievances will be promptly heard and decided with the specific purpose in mind of

(1) protecting provisions of the Union contract;

(2) prohibiting any and all violations directly or indirectly of contract provisions relating to the proper use of individual owners;

(3) prohibiting any attempts by any certificated or permitted carrier in changing his operation which will affect the rights of drivers under

the terms of the contract, and generally the certificated or permitted carriers agree to assume responsibility in policing and doing everything within their power to eliminate all alleged abuses in the use of owner-drivers which resulted in the insertion of Section 19 (Article XXXIII) in the original 1945-47 Over-the-Road contract;

(4) owner-driver operations to be terminal to terminal, except where no local employees to make such deliveries or otherwise agreed to in this contract;

(5) the certificated or permitted carriers agree that they will, with a joint meeting of the Unions, set up uniform rules and practices under which all such cases will be heard;

(6) it shall be considered a violation of the contract should any operator deduct from rental of equipment the increases provided for by the 1955 Amendments or put into effect any means of evasion to circumvent actual payment of increases agreed upon effective for the period starting February 1, 1955, and ending January 31, 1961.

"(b) No owner-operator shall be permitted to drive or hold seniority where he owns three or more pieces of leased equipment. This provision shall not apply to present owner-operators having three or more pieces of equipment under lease agreement, but such owner-operator shall not be permitted to put additional equipment in service so long as he engages in work covered by this Agreement or holds seniority. Where owner-operator drives, he can hold seniority where he works sixty (60) per cent or more of time."

This contract, of which Article 32, set forth above, is a part, is known as the Central States Area Over-the-Road

Motor Freight Agreement, with Ohio Rider. It has generally been adopted by common carriers and locals of the parent Union throughout twelve central states. It contracts for 3,000 to 3,500 carriers and 40,000 to 50,000 employees. In Ohio it covers approximately 500 carriers and 6,000 employees. Approximately 5 to 10 percent of these employees are owner-operators.

A principal question raised by the Union is whether this state court has jurisdiction to enjoin the enforcement of the contract, or whether its jurisdiction has been preempted by authority granted the National Labor Relations Board.

The Court of Common Pleas of Summit County found that such jurisdiction was vested in the state courts, and enjoined, pursuant to trial, the enforcement of the contract, on the theory that it violated the state statutes governing monopolies and restraints of trade. This court, now entertaining an appeal for trial de novo from the judgment there entered, must determine the issues there adjudicated.

From the record, we find that the controversial agreement was entered into following a strike, called to induce the carriers to contract with the Union, and that the contract so executed infringed upon and superseded many of the provisions of an existing contract between the plaintiff and the carriers.

It is not the purpose of this court to write at length on the legal questions presented, as would perhaps be our duty if we were hearing the case on questions of law, thereby examining the record for error of the trial court. In this appeal, this court is a trial court, and we are called upon to determine questions of fact.

It is also necessary to examine, with diligence, the law necessarily involved, and to apply it to the facts found to

exist. The hundred and more cases cited and analyzed by counsel are well known to the lawyers in the case. We will not repeat them here.

In determining the jurisdiction of this court, we first observe that the subject matter of the litigation falls within the powers of the state courts, unless federal statutes enacted pursuant to the commerce clause of the Constitution of the United States intend to supersede or suspend the exercise of the reserved powers of the states. Illinois Central Rd. Co. v. State Public Utilities Comm. of Illinois; 245 U. S. 493, at p. 510, 62 L. Ed. 425.

We find no federal statute ordering, nor in fact any federal case which holds, that the federal government retains exclusively to itself the right to remedy the evils resulting from contracts and agreements between interstate carriers and Unions found to be in restraint of trade. Federal legislation does not occupy the entire field, to the exclusion of state laws. We further do not find that we are met with a labor dispute, unfair labor practice, right to collective bargaining, or any other right arising under the labor laws of the federal government, of which the right of adjudication has been exclusively retained by the federal government acting through any of its agencies.

On the question of jurisdiction, we find and hold that, if it be found that the contract before us, in connection with the established facts, is counter to this state's public policy as pronounced in its antitrust laws, this court has jurisdiction to restrain such conduct, because it falls within a field open to state regulation, even though its effect falls upon litigants involved in interstate commerce.

Upon the basis of the allegations in the pleadings and the proof adduced, we find that the petitioner, an independent contractor, to the extent that he leases motor vehicles to carriers, rather than an employee under the fed-

eral statutes, could not have presented his grievances to the National Labor Relations Board. There is nothing in the National Labor Relations Act, as amended by the Labor Management Relations Act (Taft-Hartley Act), which would give the petitioner herein such right.

As is indicated above, this court rejects the claim of lack of jurisdiction of this court to adjudicate the issues; and, after so ruling, we now proceed to examine the right of the petitioner to injunctive relief, because, as heretofore stated, the subject matter of the litigation falls within the powers of the state courts.

The public policy of this state in respect to monopoly and restraints of trade is set forth in Sec. 1331.01, R. C., et seq. The first-named statute, in so far as here applicable, is:

> "As used in sections 1331.01 to 1331.14, inclusive, of the Revised Code:
>
> "• • •
>
> "(B) 'Trust' is a combination of capital, skill, or acts by two or more persons for any of the following purposes:
>
> "(1) To create or carry out restrictions in trade or commerce;
>
> "(2) To limit or reduce the production, or increase or reduce the price of merchandise or a commodity;
>
> "(3) To prevent competition in manufacturing, making, transportation, sale, or purchase of merchandise, produce, or a commodity;
>
> "(4) To fix at a standard or figure, whereby its price to the public or consumer is in any manner controlled or established, an article or commodity of merchandise, produce, or commerce intended for sale, barter, use, or consumption in this state;

"(5) To make, enter into, execute or carry out contracts, obligations, or agreements of any kind by which they bind or have bound themselves not to sell, dispose of, or transport an article or commodity, or an article of trade, use, merchandise, commerce, or consumption below a common standard figure or fixed value, or by which they agree in any manner to keep the price of such article, commodity, or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of an article, commodity, or transportation between them or themselves and others, so as directly to preclude a free and unrestricted competition among themselves, purchasers, or consumers in the sale or transportation of such article or commodity, or by which they agree to pool, combine, or directly or indirectly unite any interests which they have connected with the sale or transportation of such article or commodity, that its price might in any manner be affected.

"A trust as defined in division (B) of this section is unlawful and void."

It has been heretofore observed that the appellee Oliver has his equipment under lease to the carriers. It was a lease entered into through a voluntary agreement between the carriers and him. That the contract between the carrier and the Union would supersede and nullify many of the items of his contract is not open to dispute.

The carrier-Union contract may be succinctly said to be one which fixes the price to be charged for the use and supervision of the trucks and trailers used in the trucking business, owned by individual persons who lease their equipment to the carriers.

It is the judgment of this court that such an agreement, and the consequences inevitably following therefrom, if the

contract were allowed to stand, is squarely in conflict with the public policy of this state as reflected in Sec. 1331.01, R. C., et seq.

We have been favored with a careful analysis of this case made by Judge Colopy, the trial judge in the court below. We accept his reasoning as sound, and, by reference, make his opinion a part of this one. We further note the similarity of basic principles between the instant case and State ex rel. Cullitan v. Greater Cleveland Livery Owners Assn. et al., 74 N. E. 2d 104.

Judge McNamee, in the Cullitan case, has with rare ability discussed the principles of law involved in this case. We make especial reference to the opinion there rendered.

In conclusion we summarize:

1. This court has jurisdiction of both the parties and the subject matter.

2. Article 32 of the contract, here the subject matter of the litigation, is in violation of Sec. 1331.01, R. C., et seq., and, by virtue of Sec. 1331.06, R. C., is void and unenforcible.

3. A permanent injunction will be entered of like character to that entered in the Court of Common Pleas.

Hunsicker, P. J., and Stevens, J., concur.

APPENDIX "C."

State of Ohio, Summit County. } ss.

In the Court of Common Pleas.

No. 196,714.

Revel Oliver,

Plaintiff,

vs.

All States Freight, Inc., et al.,

Defendants.

Finding.
July 26, 1956.

Colopy, J.

Appearances:

Stanley Denlinger, Esq., 1622 First National Tower, Akron, Ohio, counsel on behalf of Plaintiff.

David Previant, Esq., of Padway, Goldberg, and Previant, 212 West Wisconsin Avenue, Milwaukee, Wisconsin;

Robert C. Knee, Esq., Winters Bank Building, Dayton, Ohio; and

Bruce B. Laybourne, Esq., Second National Building, Akron, Ohio, counsel on behalf of Local No. 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Kenneth Burke.

Charles R. Iden, Esq., of Brouse, McDowell, May, Bierce and Wortman, 2200 First National Tower, Akron, Ohio, counsel on behalf of A. C. E. Transportation Company, Inc., and Interstate Truck Service, Inc.

This action was instituted as a class suit by the Plaintiff, Revel Oliver, and "all other owners of motor freight equipment similarly situated, as the plaintiff," against numerous local unions, affiliated with "The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers," Kenneth Burke, the President and Business Agent for Local No. 24, and many common carriers, as the Defendants. The Plaintiff has since dismissed from the action all other owners of motor freight equipment situated as the Plaintiff and all defendants except Local No. 24 (an affiliate of said Union), Kenneth Burke, the A. C. E. Transportation Company, Inc., and Interstate Truck Service, Inc. In the first cause of action, the Plaintiff seeks an order enjoining the Defendants from carrying out the terms of a certain contract and for equitable relief. The second cause of action, in which damages are sought from the defendants now stands withdrawn.

The plaintiff is now and has been at all times in question the owner of ten units of motor freight equipment consisting of four tractors and six trailers each of which is under a lease agreement with one or the other of the said defendant companies. The defendant companies are engaged in the business of transporting freight both within and outside of Ohio. It is admitted by the parties that the Plaintiff and the defendant carriers, the lessees of the equipment, are engaged in interstate commerce. (Hereafter the names of the Defendant lessees will be abbreviated for brevity.)

The importance of this action suggests that the provisions of the leases and Article 32 of the contract under attack should be fully set forth.

The provisions of the leases with the Defendant A. C. E. are:

"Motor Freight Transportation Agreement

"This Agreement, by and between A. C. E. Transportation Co., Inc., a corporation of Akron, Ohio, hereinafter designated the Carrier, and ..... hereinafter designated as the Operator,

"Witnesseth:

"Whereas, Carrier is a common carrier of property by motor vehicle operating in interstate commerce and certificated by the Interstate Commerce Commission and state utility commissions to perform such service, and

"Whereas, Operator is the owner of the motor vehicle equipment herein described, and enters into this agreement for the purpose of furnishing transportation service to Carrier under the terms and conditions set forth herein, it being understood and agreed by the parties hereto, that if this Agreement is not executed by the Operator personally, that the undersigned, in executing the same, is acting as an agent of the Operator and represents that he has full power of attorney and is authorized by the Operator to act in his place and stead and to do and perform each and every act and thing which this Agreement requires Operator to do.

"Now, Therefore, in consideration of the mutual promises and agreements by the parties hereto, Operator agrees as follows:

"To provide the Carrier with the transportation service between the points and over the routes designated by carrier as will be more specifically set forth by waybills for each individual shipment, and a manifest or load sheet which will be given Operator for each trip to be made by means of the motor vehicle equipment herein set forth.

"That the equipment described herein is and at all times during the continuance of this agreement, will be maintained in the first class repair at the expense of Operator and that he will pay all costs in connection with the operation of said equipment; that he will furnish license plates and registration certificates required for said motor vehicle equipment by the state of his residence.

"That said equipment will be operated at his expense by himself or by competent employees of his in a careful manner.

"That he will pick up, transport, and deliver punctually freight received by him while in the transportation service of Carrier.

"To secure delivery receipts, properly signed and dated, covering all freight transported hereunder by Operator and to handle such transportation business in such a manner as to promote the good will and good reputation of Carrier.

"To, at all times, display certificate numbers of the Carrier while operating over the routes and in the service of the Carrier, and at no other time whatsoever, so that when the motor vehicle equipment described herein is not used in the service of Carrier, all certificate numbers, names or other means of identification showing the same was operated in the service of the Carrier will be removed therefrom.

"That the equipment will be operated only over the certified routes of Carrier.

"To comply at all times, with all laws, rules, and/or regulations of the Interstate Commerce Commission, Bureau of Motor Carriers, or any public utilities commission of any state or other authority of any state in

or through which the motor vehicles herein described may be operated under this Agreement and which may be binding or obligatory on either party hereto.

"To report to the Carrier any and all accidents involving equipment herein, or loss or damage to the freight or cargo therein to such individuals as Carrier may designate.

"To provide Workmen's Compensation coverage for his drivers and employees and to be responsible for the payment of all premiums due under any Workmen's Compensation law and to pay all state and federal taxes for unemployment compensation insurance, old age pensions, and other social security, and to meet all requirements or regulations now or hereafter adopted or promulgated by any legal constituted authority with respect to all persons engaged by him in the performance of this Agreement and, further, agrees to indemnify and keep indemnified Carrier against all liability by reason of his failure to do so.

"To sign all load or manifest sheets or have his drivers or employees do so for each load transported hereunder and to collect freight, C. O. D., and any other charges on specific shipments when directed by written instructions on freight bills, manifests, load sheets, or otherwise, to do so.

"The carrier will provide full coverage insurance such as property damage, public liability and cargo, except on cargo when such loss occurs by reasons of fire, theft, wet freight, collision, or upset occurring when equipment is in transit, then, in that event, the maximum liability of the operator shall be Two Hundred Fifty Dollars ($250.00).

"The relationship herein created is that of independent contractor and not that of employer and em-

ployee. Operator is a contractor only and not the employee of Carrier.

"It is mutually understood and agreed that Carrier shall not be obligated to pay any fines or settlements that may be assessed against Operator or against his employees by reason of any violation of any law or regulation by him or them.

"The Carrier shall not be liable to Operator for any damage sustained by or to the equipment of Operator, while the equipment is engaged in said transportation service or for loss by confiscation or seizure of the equipment by any public authority.

"In such cases where operator tractor pulls a trailer belonging to carrier or the carrier tractor pulls a trailer belonging to an operator, or an operator tractor pulls a trailer belonging to another operator, the owner of the tractor shall be liable for all losses sustained resulting from damage to the said trailer while being so used, limited, however, to the sum of Two Hundred and Fifty Dollars ($250.00) in each accident.

"It is further agreed by and between the parties hereto, that no verbal agreements or understandings of any kind or character have been entered into; that any previous agreements are hereby voided and revoked by this Agreement and that all Agreements between the parties are set forth herein, and that this Agreement shall, at all times, be interpreted under the laws of the state of Ohio.

"Compensation on a per ton basis between authorized points of service will be made according to published schedule (copy annexed). Pick up and deliveries made by the Operator on L. T. L. shipments

will be paid at the rate of ..... per cwt., except pick up or deliveries made to connecting lines or delivery carriers the rate will be ..... per cwt. with a maximum of Ten Dollars ($10.00) when the work is performed by the Operator. All truck load or volume shipments pick up or deliveries taking a truck load or volume rating will be made free of charge.

"Settlement will be made the 15th of each succeeding month, or the operator may draw any money on the books upon the completion of each trip and only when Operator has delivered to Carrier delivery receipts, trip sheets, driver's logs, or any other records required to be kept by carrier. If there are any loss or damages to the freight while in transit by the Operator, of C. O. D.'s, freight charges or other amounts not accounted for, such monies, and amount of any claims, will be deducted from the compensation due Operators.

"Upon the termination of this Agreement, Operator will return to Carrier any property or equipment belonging to Carrier, including documents, papers, identification plates, public utility tax cards, and any other evidence of operating authority belonging to Carrier.

"This contract shall be effective when approved by a duly authorized agent of the Carrier and shall terminate when all conditions have been complied with by the parties hereto.

"Tractor: .....
Make Motor No. Serial No.

.....
License No. State

"Trailer: .....
Make Motor No. Serial No.
.....
License No. State

"Signed in duplicate this ..... day of ....., 195....

A. C. E. Transportation Co., Inc.

"Signed in presence of:
.....
.....

By .....
Carrier.

.....
.....
Operator."

The provisions of the leases with Interstate are:

"Truck Lease.

"This Agreement by and between .....
..... of ....., Lessor, and Interstate Truck Service, Inc., of Martins Ferry, Ohio, Lessee.

"Witnesseth:

"1. The lessor hereby leases to the lessee the following described vehicle equipment:

Make of Tractor Serial No. State License No.
.....
Make of Trailer Serial No. State License No.
.....

Wherever it (or they) may be, for a period of .....
..... commencing at ..... the ..... day of ....., 19....., and expiring at .....

..... the ..... day of ....., 19.....

"2. The lessor will furnish for operating of the said vehicle or vehicles the required lubricants and fuel, the necessary repairs and maintenance to keep vehicle or vehicles in proper operating condition, and will also furnish one or more competent drivers, as may be the case.

"3. During the period of this lease the said vehicle or vehicles shall be solely and exclusively under the direction and control of the lessee who shall also be liable to the shipper or consignee for any loss or damage not caused by the operation of the said vehicle or vehicles by the lessee, and for any public liability resulting from the said operation by the lessee, subject, however, to such, if any, rights or subrogation which the insurance companies of the lessee may have under the circumstances.

"4. Upon the expiration of this lease possession of the vehicle or vehicles will be promptly restored to the lessor.

"5. In consideration of the foregoing, lessee agrees promptly to pay lessor and the lessor agrees to accept as hire of the said equipment and reimbursement for the services of any driver or drivers the following compensation:

70/75% of The Revenue Accruing to Interstate Truck Service, Inc., Depending on Commodity, Less Charges.

"Signed in quadruplicate this ..... day of ....., 19.....

"It is understood that this agreement may be cancelled by either party upon five days notice, provided

that the lessor shall complete delivery of all freight which he may have enroute or under load at the time of notice of cancellation."

.....

Lessor,

By.....

Interstate Truck Service,

Lessee,

By.....

While the aforesaid leases were in effect the Union and said Defendant Carriers executed the contract (Exs. 19 and 21 of R.) which is the subject of the controversy. The provisions of Article 32 are:

"Owner-Operators.

"Section 1. Owner-operators (See Note), other than certificated or permitted carriers, shall not be covered by this Agreement, unless affiliated by lease with a certificated or permitted carrier which is required to operate in full compliance with all the provisions of this Agreement and holding proper I. C. C. and state certificates and permits. Such owner-operators shall operate exclusively in such service and for no other interests.

"(Note: Whenever 'owner-operator' is used in this article, it means owner-driver only, and nothing in this article shall apply to any equipment leased except where owner is also employed as a driver.)

"Section 2. This type of operator's compensation for wages and working conditions shall be in full accordance with all the provisions of this Agreement. The owner-operator shall have seniority as a driver only.

"Section 3. Certificate and title to the equipment must be in the name of the actual owner.

"Section 4. In all cases, hired or leased equipment shall be operated by an employee of the certificated or permitted carrier. The employer expressly reserves the right to control the manner, means and details of, and by which the owner-operator performs his services, as well as the ends to be accomplished.

"Section 5. Certificated or permitted carriers shall use their own available equipment, together with all leased equipment under minimum thirty-day bona fide lease arrangements, on a rotating board, before hiring any extra equipment.

"Section 6. Separate checks shall be issued by the certificated or permitted carriers for driver's wages and equipment rental. At no time shall the equipment check be for less than actual miles operated. Separate checks for drivers shall not be deducted from the minimum truck rental revenue. The driver shall turn in time direct to the certificated or permitted carrier. All monies due the owner-operator may be held no longer than two weeks, except where the lease of equipment agreement is terminated and in such case all monies due the operator may be held no longer than thirty (30) days from the date of the termination of the operation of the equipment.

"Section 7. Payment for equipment service shall be handled by the issuance of a check for the full mileage operated, tonnage or percentage, less any agreed advances. A statement of any charges by the certificated or permitted carrier shall be issued at the same time, but shall not be deducted in advance.

"Section 8. The owner-operator shall have complete freedom to purchase gasoline, oil, grease, tires, tubes, etc., including repair work at any place where

efficient service and satisfactory products can be obtained at the most favorable prices.

"Section 9. There shall be no deduction pertaining to equipment operation for any reason whatsoever.

"Section 10. The Employer or certificated or permitted carrier hereby agrees to pay road or mile tax, social security tax, compensation insurance, public liability and property damage insurance, bridge tolls, fees for certificates, permits and travel orders, fines and penalties for inadequate certificates, license fees, weight tax and wheel tax, and for loss of driving time due to waiting at state lines, and also cargo insurance. It is expressly understood that the owner-driver shall pay the license fees in the state in which title is registered.

"All tolls no matter how computed, must be paid by the Employer regardless of any agreement to the contrary.

"All taxes or additional charges imposed by law relating to actual truck operation and use of highways, no matter how computed or named, shall be paid by the Carrier, excepting only vehicle licensing as such, in the state where title is registered.

"Section 11. There shall be no interest, or handling charge on earned money advanced prior to the regular pay day.

"Section 12. (a) All certificated or permitted carriers hiring or leasing equipment owned and driven by the owner-driver shall file a true copy of the lease agreement covering the owner-driven equipment with the Joint State Committees. The terms of the lease shall cover only the equipment owned and driven by the owner-driver and shall be in complete accord with the minimum rates and conditions provided herein,

plus the full wage rate and supplementary allowances for drivers as embodied elsewhere in this Agreement.

"(b) The minimum rate for leased equipment owned and driven by the owner-driver shall be:

	Per Mile
Single axle, tractor only	9½¢
Tandem axle, tractor only	10¢
Single axle, trailer only	3¢
Tandem axle, trailer only	4¢

75% of the above rates to apply for deadheading, if and when ordered, provided, however, that the 75% rate will apply only on first empty dispatch away from the home terminal; thereafter the full equipment rental rate to apply until driver is redispatched from home terminal; the above rates to be based on 23,000-pound load limit. On load limits over 23,000 pounds, there shall be one-half (½) cent additional per mile for each 1,000 pounds or fraction thereof in excess of 23,000 pounds. There shall be a minimum guarantee of 24,000 pounds for leased equipment owned and driven by the owner-driver. Nothing herein shall apply to leased equipment not owned by a driver.

"The minimum rates set forth above result from the joint determination of the parties that such rates represent only the actual cost of operating such equipment. The parties have not attempted to negotiate a profit for the owner-driver.

"Section 13. Driver-owner mileage scale does not include use of equipment for pickup or delivery at point of origin terminal or at point of destination terminal, but shall be subject to negotiations between the Local Union and Company. Failure to agree shall be submitted to the grievance procedure.

"Section 14. There shall be no reductions where the present basis of payment is higher than the mini-

mums established herein for this type of operation. Where owner-operator is paid on a percentage or tonnage basis and the operating company reduces its tariff, the percentage or tonnage basis of payment shall be automatically adjusted so that the owner-operator suffers no reduction in equipment rental or wages, or both.

"Section 15. It is further understood and agreed that any arrangements which have heretofore been entered into between members of this Union, either among themselves or with the Employer or with the aid of the Employer, applicable to owner-driver equipment contrary to the terms hereof, shall be dissolved or modified within thirty (30) days after the signing of this Agreement so that such arrangements shall apply only to equipment of the owner-driver while being driven by such owner-driver. In the event that the parties cannot agree on a method of dissolution or modification of such arrangement to make the same conform to this Agreement, the question of dissolution or modification shall be submitted to arbitration, each party to select one member of the arbitration board, and the two so selected to choose a third member of said board. If the two cannot agree upon the third within five (5) days, he shall be appointed by the Joint State Committee. The decision of said board to be final and binding.

"Section 16. It is further agreed that the intent of this clause and this entire Agreement is to assure the payment of the Union scale of wages as provided in this Agreement and to prohibit the making and carrying out of any plan, scheme or device to circumvent or defeat the payment of wage scales provided in this Agreement. This clause is intended to prevent the continuation of or formation of combinations or corporations or so-called lease of fleet arrangements

whereby the driver is required to and does periodically pay losses sustained by the corporation or fleet arrangement or is required to accept less than the actual cost of the running of his equipment, thus, in fact, reducing his scale of pay.

"Section 17. It is further agreed that if the Employer or certificated or permitted carrier requires that the 'driver-owner-operator' sell his equipment to the Employer or certificated or permitted carrier, directly or indirectly, the 'driver-owner-operator' shall be paid the fair true value of such equipment. Copies of the instruments of sale shall be filed with the Union and unless objected to within ten (10) days shall be deemed satisfactory. If any question is raised by the Union as to such value, the same shall be submitted to arbitration, as above set forth, for determination. The decision of the arbitration board shall be final and binding.

"Section 18. It is further agreed that the Employer or certificated or permitted carrier will not devise or put into operation any scheme, whether herein enumerated or not, to defeat the terms of this Agreement, wherein the provisions as to compensation for services on and for use of equipment owned by owner-driver shall be lessened, nor shall any owner-driver lease be cancelled for the purpose of depriving Union employees of employment, and any such complaint that should arise pertaining to such cancellation of lease or violation under this section shall be subject to Article X.

"Section 19. (a) The use of individual owner-operators shall be permitted by all certificated or permitted carriers who will agree to submit all grievances pertaining to owner-operators to joint Employer-Union grievance committees in each respective state. It is understood and agreed that all such grievances

will be promptly heard and decided with the specific purpose in mind of

(1) protecting provisions of the Union contract;

(2) prohibiting any and all violations directly or indirectly of contract provisions relating to the proper use of individual owners;

(3) prohibiting any attempts by any certificated or permitted carrier in changing his operation which will affect the rights of drivers under the terms of the contract, and generally the certificated or permitted carriers agree to assume responsibility in policing and doing everything within their power to eliminate all alleged abuses in the use of owner-drivers which resulted in the insertion of Section 19 (Article XXXIII) in the original 1945-47 Over-the-Road contract;

(4) owner-driver operations to be terminal to terminal, except where no local employees to make such deliveries or otherwise agreed to in this contract;

(5) the certificated or permitted carriers agree that they will, with a joint meeting of the Unions, set up uniform rules and practices under which all such cases will be heard;

(6) it shall be considered a violation of the contract should any operator deduct from rental of equipment the increases provided for by the 1955 Amendments or put into effect any means of evasion to circumvent actual payment of increases agreed upon effective for the period starting February 1, 1955, and ending January 31, 1961.

"(b) No owner-operator shall be permitted to drive or hold seniority where he owns three or more pieces

of leased equipment. This provision shall not apply to present owner-operators having three or more pieces of equipment under lease agreement, but such owner-operator shall not be permitted to put additional equipment in service so long as he engages in work covered by this Agreement or holds seniority. Where owner-operator drives, he can hold seniority where he works sixty (60) per cent or more of time."

This action was filed and a preliminary injunction obtained against the Union and said Defendant Carriers after they informed the Plaintiff that his leases were about to be cancelled pursuant to said Article 32. According to the testimony of the Defendant Burke, the terms of the contract would have been enforced except for the temporary injunction having been issued (R. 103).

The contract was entered into after extended negotiations between representatives of the Union Locals and representatives of the Carriers. There has been no picketing or strike action taken. The Plaintiff, as well as numerous other owner-operators, has at all times in question maintained membership in the Union. The Plaintiff personally operates one of the units covered by the leases although his driving has not been regular and consistent.

The contract in question has been generally adopted by Common Carriers and Locals of the Union throughout the twelve central states including Ohio. It covers in all 3,000 to 3,500 carriers, and 40,000 to 50,000 employees. Four hundred to five hundred of the carriers, and five to six thousand of the employees are in the State of Ohio. Approximately five to ten percent of these employees are owner-operators.

I have drawn conclusions as follows from a consideration of the pleadings, the evidence, and the briefs:

1st—Article 32 of the contract is not within the protection provided by Sec. 157 of the Labor Manage-

ment Relations Act of 1947 (hereafter referred to as L. M. R. A.) (29 U. S. C. A.);

2nd—Article 32 violates Sec. 1331.01, R. C. of Ohio, and is void;

3rd—The Plaintiff will be injured if the parties carry out the provisions of Article 32;

4th—The Plaintiff has no remedy under the L. M. R. A. or any other federal legislation;

5th—Jurisdiction in the state courts exists; and

6th—It is the duty of this court to exercise its powers to restrain the parties from enforcing the terms of Article 32.

As to the Union's claim that its action is authorized it should be observed that Sec. 157 of the L. M. R. A. provides that "Employees shall have the right to bargain collectively . . . and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection . . ." Sec. 158d of the Act reads, "For the purpose of this section, to bargain collectively is the performance of the employer and the representatives of the employees to meet . . . and confer . . . with respect to wages, hours, and other terms and conditions of employment."

The Union claims that Article 32 deals with the subject of wages in this way. It asserts that the owner-driver's wages will in effect be reduced if the Carrier is allowed to lease equipment from the owner-driver at a figure less than the actual cost of its operation. The contract provides for an indirect method of protecting his wages against a possible imprudent business venture. I do not believe Sec. 157 can be reasonably construed to permit this remote and indirect approach to the subject of wages. If the contrary is true then it would seem to follow that it

is proper in any case to fix the price of an employer's products on the theory that if it is left to him to do he might fix it so low as to ultimately impair his employees' wages and the jobs themselves. The Union claims that the tractor-trailer here may be compared to the tools which an employee owns and uses in the work. An analysis of the two situations will show material differences. The tractor-trailer represents a very substantial capital investment, whereas the tools do not. The tractor-trailer has been made the subject of a separate and distinct business transaction in which the owner has transferred all or part of his interest in the same for a time to another party for a remuneration. This is not the case where the employee retains his interest in his tools and makes such use of them that they become an integral and inseparable part of his labor. It is significant in this connection that the Union and the Defendant Lessee-Carriers themselves have in their contract separated the subject of the owner-driver's tractor-trailer from the subject of his labor. The subject matter dealt with in Article 32 with respect to altering the provision of the leases was outside the legitimate scope of "wages, hours, and other terms and conditions of employment." And this is true in my opinion, irrespective of whether the Plaintiff's technical status is that of employee or independent contractor. (For a list of some of the subjects that may be included in other "terms and conditions" in a collective bargaining agreement, see Forkosch, A Treatise of Labor Law, p. 874.) The case of Los Angeles Pie Bakers Association v. Bakery Drivers Local (Calif.), 264 Pac. 2d 645, brings no support to the Union's claim. There the Union sought to change the method of payment of the owner-driver who used his truck in the distribution of pies. For his equipment the Union proposed that he receive compensation based on a designated discount from the retail price. This, said the Court, is the equivalent of wages for over-all services.

The fixing of prices of the pies was not there involved. Neither was there any proposed negotiation concerning the delivery wagon that the owner-driver retained in connection with the rendition of his services. The cases cited by the Court at page 619 of its opinion shows that it recognized that a contract between a union and an employer group in fixing prices of commodities would be contrary to the anti-trust laws of that state.

The argument that is premised upon the workmen's right to organize and negotiate in concert under Section 157 of the L. M. R. A. was made by a union to support its action in maintaining control over the catching, marketing and price fixing of fish, in Commonwealth v. McHugh, 93 N. E. 2d 751 (Mass.). In rejecting the claim, the court said,

> P. 760, "We cannot agree with the defendants' argument that they have done nothing more than engage in ordinary labor union activities for the purpose of improving their economic condition. Doubtless their ultimate purpose was to improve their economic condition, but that is the purpose of all persons who engage in monopolistic enterprises."

Like all rights created by law, the rights created by Section 157 in favor of organized employees is not absolute as the Union seems to contend. It is limited in extent and relative in character and must be balanced against competing rights of other persons and the public. Each and every case to which any reference has been made in which the court enjoined the union from continuing a course of tortious conduct, or allowed damages for same, conclusively rebuts the Union's contention that its right to act in concert carries unqualified immunity.

Article 32 of the contract undoubtedly violates Section 1331.01, R. C. of Ohio. That statute provides:

"1331.01 Definitions. (G. C. Secs. 6390, 6391.)

As used in sections 1331.01 to 1331.14, inclusive, of the Revised Code:

(A) 'Person' includes corporations, partnerships and associations existing under or authorized by any state or territory of the United States or a foreign country.

(B) 'Trust' is a combination of capital, skill, or acts by two or more persons for any of the following purposes:

(1) To create or carry out restrictions in trade or commerce;

(2) To limit or reduce the production, or increase or reduce the price of merchandise or a commodity;

(3) To prevent competition in manufacturing, making, transportation, sale, or purchase of merchandise, produce, or a commodity;

(4) To fix at a standard or figure, whereby its price to the public or consumer is in any manner controlled or established, an article or commodity of merchandise, produce, or commerce intended for sale, barter, use, or consumption in this state;

(5) To make, enter into, execute, or carry out contracts, obligations, or agreements of any kind by which they bind or have bound themselves not to sell, dispose of, or transport an article or commodity, or an article of trade, use, merchandise, commerce, or consumption below a common standard figure of fixed value, or by which they agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of an article, commodity, or transportation between them or themselves and others so as directly or indirectly to

preclude a free and unrestricted competition among themselves, purchasers, or consumers in the sale or transportation of such article or commodity, or by which they agree to pool, combine, or directly or indirectly unite any interests which they have connected with the sale or transportation of such article or commodity, that its price might in any manner be affected.

A trust as defined in division (B) of this section is unlawful and void."

It appears on the face of the contract under attack that all essential elements to constitute a violation exist. There are restrictions and restraints imposed upon articles that are widely used in trade and commerce. Such restrictions are the direct and inevitable result of the concerted action of the Union combining with a non-labor third party in a formal contract. The restraints imposed are not reasonable in character and thus countenanced in the law. The restraints in question are unreasonable. Their effect is to oppress and destroy competition. They preclude an owner of property from reasonable freedom of action in dealing with it. In the Greater Cleveland Livery Owners Association case, 74 N. E. 2d 104, at p. 107, His Honor, Judge McNamee, quotes the following pertinent statement from Chief Justice Fuller in U. S. v. E. C. Knight Co., "Again, all the authorities agree that, in order to vitiate a contract or combination, it is not essential that its result should be a complete monopoly; it is sufficient if it really tends to that end, and to deprive the public of the advantages which flow from free competition."

None of the authorities cited support the Union's claim that Article 32 does not constitute an unreasonable restraint of trade. The case law strongly indicates the contrary. See Allen Bradley v. Local Union No. 3, 325 U. S. 797; Giboney v. Empire Storage and Ice Co., 336 U. S. 490; and Commonwealth v. McHugh, supra. The following

language of the Court in the Giboney case answers much of the Union's claim in the present action:

> "It is too late in the day to assert, against statutes which forbid combinations of competing companies, that a particular combination was induced by good intentions."

and, further, at page 841:

> "To exalt all labor union conduct in restraint of trade above all state control would greatly reduce the traditional powers of states over their domestic economy and might conceivably make it impossible for them to enforce their antitrade restraint laws. See Allen Bradley Co. v. Local Union No. 3, I. B. E. W., 325 U. S. 797, 810, 89 L. ed. 1939, 1948, 65 S. Ct. 1533."

and at page 844:

> ". . . They were exercising their economic power together with that of their allies to compel Empire to abide by union rather than by state regulation of trade . . .
>
> "While the State of Missouri is not a party in this case, it is plain that the basic issue is whether Missouri or a labor union has paramount constitutional power to regulate and govern the manner in which certain trade practices shall be carried on in Kansas City, Missouri. Missouri has by statute regulated trade one way. The appellant union members have adopted a program to regulate it another way. . . . We hold that the state's power to govern in this field is paramount . . ."

It is self-evident that performance of the terms of Article 32 will injure the Plaintiff. His power to exercise rights incident to ownership over property in which he has an interest is materially limited. It is an injury or damage that the law recognizes. The fact that such injury cannot

be fairly measured in a law action for damages is the basis for this action in equity.

Pronouncements of the U. S. Supreme Court give a clear standard for determining the issue as to jurisdiction. The rule is simply this: If the Federal enactments provide a remedy in a federal board or court, the jurisdiction of the state court is impliedly excluded. If the Federal law fails to provide any such remedy, the state court's jurisdiction remains. See Allen Bradley Local v. Wisconsin Employment Relations Board, 315 U. S. 740; Garner v. Teamsters Union, 346 U. S. 485; and United Construction Workers v. Laburnum Construction Corp., 347 U. S. 656. The L. M. R. A. provides no remedy for Plaintiff's complaint. Under that act, the Defendant Union cannot be charged with any tortious conduct. The Act (Sec. 158 being the pertinent part) does not prohibit the conduct herein involved. The state court does not lose jurisdiction over the grievance for the alleged reason that all the parties are engaged in interstate commerce. In support of this statement see, International Union of U. A. W. A. v. Wisconsin Employment Relations Board, 336 U. S. 245, 254; and Commonwealth v. McHugh, supra. If the Union's broad claim that the exclusive jurisdiction to regulate the interstate motor truck industry deprives the court of jurisdiction over this wrong to the Plaintiff, then it would seem to follow that the driver of the vehicle engaged in such commerce would not have to respond in the state courts for damages resulting from his negligence in the state. Nor in that situation could the state enforce its speed laws against such driver. The correct answer would seem to be that the state is not regulating the motor industry in applying its anti-trust laws in this manner.

Considerable has been said in the briefs concerning the Plaintiff's status under the leases. It is my thought that his status as to being an employee or independent con-

tractor in no manner conditions his right to prevail. This action does not involve any issue about the Plaintiff's right to organize owner-drivers. Apparently that has been done within the trucking industry without a challenge being made by anyone. For this reason, those cases involving controversies as to organizing business workers are not discussed. According to the "right of control" test applied by His Honor, Judge Goodrich, in the case N. L. R. B. v. Nu-Car Carriers, 189 Fed. 2d 756, the Plaintiff's status is that of an independent contractor. And I accordingly fix his status as such under the leases. The legal consequence of his being an independent contractor is that the L. M. R. A. expressly excludes him from its provisions. Section 4 of Article 32 of the contract, however, would make him an employee of the Lessee.

A question arises concerning the effect of the Plaintiff being a member of the Defendant Local that negotiated and executed the contract which is the subject of his complaint. Why isn't he in the same position as though he personally executed the challenged contract? In the Young v. Cooperage Co. case, 164 O. S., p. 491, His Honor, Judge Zimmerman, said, ". . . Plaintiff as a Union member was represented by the Union in the agreements made between it and Defendant and was bound by their terms." Representation that binds a party is the kind that is based upon express or implied authority that has been delegated. In the present case, the Union negotiated as to a capital investment of one of its members on subjects that do not directly concern his wages, or hours, or other terms and working conditions. Also it does not seem likely that implied authority would be delegated to the Union to act for a member in making a contract prohibited by law.

Counsel for the Plaintiff shall furnish a journal entry that appropriately provides for complete and effective relief. It shall allow proper exceptions.

APPENDIX "D."

Journal Entry of Ohio Court of Appeals.

State of Ohio, Summit County. } ss.

In the Court of Appeals for the Ninth Judicial District.

Case No. 4679.

Revel Oliver, etc.,
Appellee,
vs.
All States Freight, Inc., et al.,
A. C. E. Transportation Co., Inc., et al.,
Appellees,
Local 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, etc., et al.,
Appellants.

Journal Entry.
September 30, 1957.

1. This cause came on to be heard upon the appellee's amended petition, the answers of the appellees, A. C. E. Transportation Co., Inc., Interstate Truck Service, Inc., and appellants, Local No. 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, and Kenneth Burke, the President and Business Agent for Local No. 24, upon the evidence, the briefs and arguments of counsel for all parties and after due and careful consideration the Court finds:

2. (a) At the time leases for the rental of plaintiff appellee's motor equipment were in full force and effect between plaintiff appellee and defendants appellees, A. C. E. Transportation Co., Inc., and Interstate Truck Service, Inc., the Union and A. C. E. Transportation Co., Inc., and Interstate Truck Service, Inc., executed a contract, the provisions of Article 32 thereof being as follows:

"Owners-Operators

"Section 1. Owner-operators (See Note), other than certificated or permited carriers, shall not be covered by this Agreement, unless affiliated by lease with a certificated or permitted carrier which is required to operate in full compliance with all the provisions of this Agreement and holding proper I. C. C. and state certificates and permits. Such owner-operators shall operate exclusively in such service and for no other interests.

(Note: Whenever 'owner-operator' is used in this article, it means owner-driver only, and nothing in this article shall apply to any equipment leased except where owner is also employed as a driver.)

"Section 2. This type of operator's compensation for wages and working conditions shall be in full accordance with all the provisions of this Agreement. The owner-operator shall have seniority as a driver only.

"Section 3. Certificate and title to the equipment must be in the name of the actual owner.

"Section 4. In all cases, hired or leased equipment shall be operated by an employee of the certificated or permitted carrier. The employer expressly reserves the right to control the manner, means and details of, and by which, the owner-operator performs his services, as well as the ends to be accomplished.

"Section 5. Certificated or permitted carriers shall use their own available equipment, together with all leased equipment under minimum thirty-day bona fide lease arrangements, on a rotating board, before hiring any extra equipment.

"Section 6. Separate checks shall be issued by the certificated or permitted carriers for driver's wages

and equipment rental. At no time shall the equipment check be for less than actual miles operated. Separate checks for drivers shall not be deducted from the minimum truck rental revenue. The driver shall turn in time direct to the certificated or permitted carrier. All monies due the owner-operator may be held no longer than two weeks, except where the lease of equipment agreement is terminated and in such cases all monies due the operator may be held no longer than thirty (30) days from the date of the termination of the operation of the equipment.

"Section 7. Payment for equipment service shall be handled by the issuance of a check for the full mileage operated, tonnage or percentage, less any agreed advances. A statement of any charges by the certificated or permitted carrier shall be issued at the same time, but shall not be deducted in advance.

"Section 8. The owner-operator shall have complete freedom to purchase gasoline, oil, grease, tires, tubes, etc., including repair work, at any place where efficient service and satisfactory products can be obtained at the most favorable prices.

"Section 9. There shall be no deduction pertaining to equipment operation for any reason whatsoever.

"Section 10. The Employer or certificated or permitted carrier hereby agrees to pay road or mile tax, social security tax, compensation insurance, public liability and property damage insurance, bridge tolls, fees for certificates, permits and travel orders, fines and penalties for inadequate certificates, license fees, weight tax and wheel tax, and for loss of driving time due to waiting at state lines, and also cargo insurance. It is expressly understood that the owner-driver shall pay the license fees in the state in which title is registered.

"All tolls, no matter how computed, must be paid by the Employer regardless of any agreement to the contrary.

"All taxes or additional charges imposed by law relating to actual truck operation and use of highways, no matter how computed or named, shall be paid by the Carrier, excepting only vehicle licensing as such, in the state where title is registered.

"Section 11. There shall be no interest, or handling charge, on earned money advanced prior to the regular pay day.

"Section 12. (a) All certificated or permitted carriers hiring or leasing equipment owned and driven by the owner-driver shall file a true copy of the lease agreement covering the owner-driver equipment with the Joint State Committees. The terms of the lease shall cover only the equipment owned and driven by the owner-driver and shall be in complete accord with the minimum rates and conditions provided herein, plus the full wage rate and supplementary allowances for drivers as embodied elsewhere in this Agreement.

"(b) The minimum rate for leased equipment owned and driven by the owner-driver shall be:

	Per Mile
Single axle, tractor only	9½¢
Tandem axle, tractor only	10¢
Single axle, trailer only	3¢
Tandem axle, trailer only	4¢

75% of the above rates to apply for deadheading, if and when ordered, provided, however, that the 75% rate will apply only on first empty dispatch away from the home terminal; thereafter the full equipment rental rate to apply until driver is redispatched from home terminal; the above rates to be based on 23,000-pound load limit. On load limits over 23,000 pounds,

there shall be one-half (½) cent additional per mile for each 1,000 pounds or fraction thereof in excess of 23,000 pounds. There shall be a minimum guarantee of 24,000 pounds for leased equipment owned and driven by the owner-driver. Nothing herein shall apply to lease equipment not owned by a driver.

"The minimum rates set forth above result from the joint determination of the parties that such rates represent only the actual cost of operating such equipment. The parties have not attempted to negotiate a profit for the owner-driver.

"Section 13. Driver-owner mileage scale does not include use of equipment for pickup or delivery at point of origin terminal or at point of destination terminal, but shall be subject to negotiations between the Local Union and Company. Failure to agree shall be submitted to the grievance procedure.

"Section 14. There shall be no reductions where the present basis of payment is higher than the minimums established herein for this type of operation. Where owner-operator is paid on a percentage or tonnage basis and the operating company reduces its tariff, the percentage or tonnage basis of payment shall be automatically adjusted so that the owner-operator suffers no reduction in equipment rental or wages, or both.

"Section 15. It is further understood and agreed that any arrangements which have heretofore been entered into between members of this Union, either among themselves or with the employer or with the aid of the Employer, applicable to owner-driver equipment contrary to the terms hereof, shall be dissolved or modified within thirty (30) days after the signing of this Agreement so that such arrangements shall apply only to equipment of the owner-driver while

being driven by such owner-driver. In the event that the parties cannot agree on a method of dissolution or modification of such arrangement to make the same conform to this Agreement, the question of dissolution or modification shall be submitted to arbitration, each party to select one member of the arbitration board, and the two so selected to choose a third member of said board. If the two cannot agree upon the third within five (5) days, he shall be appointed by the Joint State Committee. The decision of said board to be final and binding.

"Section 16. It is further agreed that the intent of this clause and this entire Agreement is to assure the payment of the Union scale of wages as provided in this Agreement and to prohibit the making and carrying out of any plan, scheme or device to circumvent or defeat the payment of wage scales provided in this Agreement. This clause is intended to prevent the continuation of or formation of combinations or corporations or so-called lease of fleet arrangements whereby the driver is required to and does periodically pay losses sustained by the corporation or fleet arrangement, or is required to accept less than the actual cost of the running of his equipment, thus, in fact, reducing his scale of pay.

"Section 17. It is further agreed that if the Employer or certificated or permitted carrier requires that the 'driver-owner-operator' sell his equipment to the Employer or certificated or permitted carrier, directly or indirectly, the 'driver-owner-operator' shall be paid the fair true value of such equipment. Copies of the instruments of sale shall be fixed with the Union and unless objected to within ten (10) days shall be deemed satisfactory. If any question is raised by the Union as to such value, the same shall be submitted to arbitration, as above set forth, for determination. The

decision of the arbitration board shall be final and binding.

"Section 18. It is further agreed that the Employer or certificated or permitted carrier will not devise or put into operation any scheme, whether herein enumerated or not, to defeat the terms of this Agreement, wherein the provisions as to compensation for services on and for use of equipment owned by owner-driver shall be lessened, nor shall any owner-driver lease be cancelled for the purpose of depriving Union employees of employment, and any such complaint that should arise pertaining to such cancellation of lease or violation under this section shall be subject to Article X.

"Section 19. (a) The use of individual owner-operators shall be permitted by all certificated or permitted carriers who will agree to submit all grievances pertaining to owner-operators to joint Employer-Union grievance committees in each respective state. It is understood and agreed that all such grievances will be promptly heard and decided with the specific purpose in mind of

(1) protecting provisions of the Union contract;

(2) prohibiting any and all violations directly or indirectly of contract provisions relating to the proper use of individual owners;

(3) prohibiting any attempts by any certificated or permitted carrier in changing his operation which will affect the rights of drivers under the terms of the contract, and generally the certificated or permitted carriers agree to assume responsibility in policing and doing everything within their power to eliminate all alleged abuses in the use of owner-drivers which resulted in the insertion of Section 19 (Article XXXIII) in the original 1945-47 Over-the-Road contract;

(4) owner-driver operations to be terminal to terminal, except where no local employees to make such deliveries or otherwise agreed to in this contract;

(5) the certificated or permitted carriers agree that they will, with a joint meeting of the Unions, set up uniform rules and practices under which all such cases will be heard;

(6) it shall be considered a violation of the contract should any operator deduct from rental of equipment the increases provided for by the 1955 Amendments or put into effect any means of evasion to circumvent actual payment of increases agreed upon effective for the period starting February 1, 1955, and ending January 31, 1961.

"(b) No owner-operator shall be permitted to drive or hold seniority where he owns three or more pieces of leased equipment. This provision shall not apply to present owner-operators having three or more pieces of equipment under lease agreement, but such owner-operator shall not be permitted to put additional equipment in service so long as he engages in work covered by this Agreement or holds seniority. Where owner-operator drives, he can hold seniority where he works sixty (60) per cent more of time."

2. (b) Plaintiff appellee is an independent contractor.

(c) Article 32 of the contract is not within the protection provided by Section 157 of the Labor Management Relations Act of 1947.

(d) Article 32 squarely is in conflict with the public policy of the State of Ohio as reflected in Sec. 1331.01 R. C. et seq. and is void and unenforcible.

(e) The plaintiff-appellee will be injured if the defendants-appellants carry out the provisions of Article 32;

(f) The plaintiff-appellee has no remedy under the Labor Management Relations Act or any other federal legislation;

(g) Jurisdiction in the state court exists; and

(h) It is the duty of this court to exercise its powers to restrain the defendants-appellants from enforcing the terms of Article 32.

3. It is therefore Ordered, Adjudged and Decreed:

(a) That the defendants-appellees, A. C. E. Transportation Co., Inc., Interstate Truck Service, Inc., and defendants-appellants, Local No. 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers and each of them, their agents, representatives and successors or persons, acting, by, through or for them, or in concert with each other, are hereby perpetually restrained and enjoined from entering into any agreements one with the other or carrying out the effects, requirements or terms of any such agreement, which will require the alteration, cancellation or violation of plaintiff-appellee's existing lease or leasing agreement or any such agreement hereafter renewed or renegotiated and entered into, and (b) That the defendants-appellees, A. C. E. Transportation Co., Inc., Interstate Truck Service, Inc., and defendants-appellants, Local No. 24 of The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers and Kenneth Burke, President and Business Agent of said Local and each of them and the successor of each and those acting in concert with said defendants-appellees and appellants are hereby perpetually enjoined and restrained from entering into any combination, arrangement, agreement or stipulation in the future, or the negotiation therefor, the purpose, intent or tendency of which is to fix or determine in any manner the rate to be charged for the use of plaintiff's equipment, leased by said plaintiff-appellee to the defendants-appellees, A. C. E. Transportation Co., Inc., and Interstate Truck Service, Inc., and (c) That the said defendants-appellees, A. C. E. Transportation Co., Inc., Interstate Truck Service, Inc., and defendants-appellants, Local No. 24 of the Interna-

tional Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers and Kenneth Burke, President and Business Agent of said Local and each of them and the successors of each are hereby perpetually enjoined from giving force and effect to Section 32 of the Contract between them as is fully set forth in this Court's finding, or any modification or alteration thereof, the import, effect or tendency of which shall attempt to fix the rates and the use of plaintiff-appellee's equipment or to fix or determine the return for plaintiff-appellee's capital investment in said equipment.

4. To all of which finding, judgment and order, the defendants-appellants and Local No. 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers and Kenneth Burke, President and Business Agent for Local No. 24 are granted proper exceptions.

Approved:

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Judge.

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Attorneys for Plaintiff,

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Attorneys for A. C. E. Transportation Co., Inc., and Interstate Truck Service, Inc.

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Attorneys for Local No. 24 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, and Kenneth Burke, President and Business Agent of Local No. 24.

APPENDIX "E."

Article I, Section 8.

The Congress shall have power

To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the supreme court;

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings;— And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

Article VI.

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the confederation.

This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties

made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives beforementioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any officer or public trust under the United States.